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### *INITIAL PUBLIC NOTICE*

## **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS**

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

**National Issues Concerning the Proposed NWPs:** The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at [www.regulations.gov](http://www.regulations.gov). Instructions for submitting comments are provided in the Tuesday, September 26, 2006 Federal Register notice. **Comments on the proposed NWPs are due by November 27, 2006.**

**Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning:** Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure No.1) lists the proposed regional conditions currently under consideration by the South Atlantic Division for the Charleston District. The Charleston District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of South Carolina. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to the U.S. Army Corps of Engineers, Charleston District, 69A Hagood Avenue, Charleston, South Carolina 29403-5107, 843 329-8044 or toll free at 866 329-8187. **Comments relating to regional conditions are due by November 20, 2006.** Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.



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In conjunction with the Federal Register notice, Corps districts will be announcing proposed regional conditions for these NWPs for public comment. When the final NWPs are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWPs. After that 60-day period, the NWPs and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs, are available for viewing at U.S. Army Corps of Engineers, Charleston District, 69A Hagood Avenue, Charleston, South Carolina 29403-5107 or on the Internet at the [www.regulations.gov](http://www.regulations.gov) site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWPs that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWPs.

Enclosed is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through [www.regulations.gov](http://www.regulations.gov) (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005.

The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

**Index of Proposed Nationwide Permits, Conditions, and Definitions**

***Proposed Nationwide Permits***

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities

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7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
- A. Emergency Repair Activities
- B. Discharges into Ditches and Canals



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- C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- D. Commercial Shellfish Aquaculture Activities
- E. Coal Remining Activities
- F. Underground Coal Mining Activities

***Proposed Nationwide Permit General Conditions***

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

***Proposed Nationwide Permit Definitions***

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Enhancement  
Ephemeral stream  
Establishment (creation)  
Independent utility  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Single and complete project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

**ENCLOSURE NO. 1**  
**PROPOSED NATIONWIDE PERMIT REGIONAL CONDITIONS**  
**FOR SOUTH CAROLINA**

The following Regional Conditions have been proposed by the Charleston District for the nationwide permits (NWP) published in the September 26, 2006 Federal Register as authorized under General Condition #23. Regional conditions are authorized to modify NWP's by adding conditions on a generic basis applicable to certain activities or specific geographic areas. Certain terminologies used in the following conditions are identified in *italics* and are defined in the above referenced Federal Register under Definitions.

**For All Nationwide Permits:**

1. The applicant must implement *best management practices* during and after all construction to minimize erosion and migration of sediments off site. These practices may include use of devices capable of preventing erosion and migration of sediments in streams and wetland areas. These devices must be maintained in a functioning capacity until the area is permanently stabilized. All disturbed land surfaces must be stabilized upon project completion.
2. Necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.
3. Any excess excavated materials not utilized as authorized back fill must be placed and contained on high land well away from waters of the U.S., including wetlands. Such material must be permanently stabilized to prevent erosion.
4. Placement and/or stockpiling (double handling) of excavated material in waters of the U.S, including wetlands, is prohibited unless specifically authorized by the nationwide permit verification. Should double handling be authorized, the material must be placed in such a manner to allow for adequate circulation of water and not be dispersed by currents or other erosive forces.
5. Once project construction is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to aquatic resources and surrounding environment.
6. The permittee must notify the Corps of Engineers, Charleston District in the event archaeological or paleontological remains are found during the course of work. Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent (i.e., older than 100 years) vessel ruins. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.
7. Use of nationwide permits does not obviate requirements to obtain other Federal, State, county, or local government authorizations.
8. With the exception of NWP 38, no NWP is authorized in areas of known or suspected sediment contamination.

**FOR SPECIFIC NATIONWIDE PERMITS:**

9. For **NWP's 12, 14, 18, 27, 29, 38, 39, 40, 42, 43, and 44** a discharge cannot cause the loss of greater than 300 linear feet of *streambed*.
10. For **NWP's 1, 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, and 36**, a notification must be submitted for any activity that would be located adjacent to an authorized Federal Navigation project. These Federal navigation areas include Adams Creek, Savannah River, Jeremy and Town Creek at McClellanville, Village Creek at Beaufort, the Charleston Harbor Navigation Project (to include the federal navigation channels in Shipyard River, Wando River, Town Creek, and channels at the Naval Weapons Station),



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Georgetown Harbor, Little River Inlet, Murrells Inlet, Main Creek at Murrells Inlet, Port Royal Harbor, Waccamaw River, Shem Creek, and the Atlantic Intracoastal Waterway.

11. For **NWP 3**, excavation of accumulated sediment or other material is not authorized in areas adjacent to existing private or commercial dock facilities, piers, canals dug for boating access, marinas, or boat slips.
12. For **NWP 3, paragraph (a) activities**, the permittee must notify the District Engineer in accordance with General Condition 27, if the discharge of dredged or fill material causes the loss of greater than 1/10-acre of waters of the U.S. or there is a discharge in a special aquatic site, including wetlands and riffle pool complexes.
13. For **NWP's 7 and 12**, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms and the inflow velocity of the associated intake structures must be limited to  $\leq 0.5$  ft/sec.
14. For **NWP 7**, activities related to the construction of outfall structures must occur in the immediate vicinity of the outfall, and must be necessary for the overall construction or operation of the outfall (e.g. pump equipment, rip-rap). Authorization does not include ancillary activities such as construction of access roads, installation of utility lines leading to or from the outfall or intake structures, construction of buildings, distant activities, etc.
15. **NWP's 12, 14, and/or 43** will not be used in conjunction with **NWP 29 or 39** for a *single and complete project*.
16. For **NWP's 12, 14, 29, and 39**, wetland/stream crossings must be aligned and designed to minimize the *loss of waters of the U.S.*
17. For **NWP 12**, excavated material shall be returned to the trench and any remaining material shall be relocated and retained on an upland disposal site. Substrate containing roots, rhizomes, seeds, etc., must be kept viable and replaced at the surface of the excavated site. Impacted wetlands will be allowed to naturally re-vegetate from replaced substrate and/or be replanted with native wetland species.
18. For **NWP 12**, stream banks that are cleared of vegetation will be stabilized using bioengineering techniques and/ or the planting of deep-rooted native species.
19. For **NWP's 12, 14, 29, and, 39**, each individual wetland/stream crossing will be stabilized immediately following completion of construction/installation at that crossing.
20. For **NWP 12**, construction techniques to prevent draining, such as anti-seep collars, will be required for utility lines buried in wetlands, when necessary. If no construction techniques to prevent draining are proposed, the applicant must provide appropriate documentation that such techniques are not required to prevent wetland drainage.
21. For **NWP 12**, all notifications must include:
  - specifications of how pre-construction contours will be re-established and verified after construction;
  - a justification for the required width of all maintained utility crossings impacting waters of the U.S.;
  - a justification for the *loss of waters of the U.S.* impacted by utility line sub-stations.
  - the acreage of impacts to waters of the U.S. indefinitely converted from a forested wetland to a herbaceous wetland and a compensatory mitigation proposal.
22. For **NWP's B, 14, 29, and 39**, all notifications must include appropriately sized and located culverts for crossings of waters of the U.S. that meet the requirements of General Conditions 2, 9 and 10.



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23. For **NWP's 14, 29, and 39**, stream crossings are required to accommodate bankfull\* flows by maintaining the existing bankfull channel cross sectional area. Flows that exceed bankfull flow must be accommodated by placement of additional culverts above the bankfull elevation.
24. For **NWP 29**, the loss of waters of the U.S. is limited to ¼-acre for a single family residence.
25. Notifications for aquatic habitat *restoration*, establishment, and enhancement activities authorized by **NWP 27** will require coordination with appropriate Federal, State, and local agencies. The coordination activity will be conducted by the Corps of Engineers. Agencies will generally be granted 15 days to review and provide comments unless the District Engineer determines that an extension of the coordination period is reasonable and prudent.
26. For **NWP 36**, the width of the boat ramp will be limited to 12 feet, only one boat ramp may be constructed on a single lot or tract of land (e.g. each lot within a subdivision), and the ramp must be limited to single family recreational uses or non-commercial, non-profit, recreational uses.
27. For **NWP 38**, notifications require the following information:
  - documentation that the specific activities are required to effect the containment, stabilization, or removal of hazardous or toxic waste materials as performed, ordered, or sponsored by a government agency with established legal or regulatory authority;
  - a narrative description indicating the size and location of the areas to be restored, the work involved and a description of the anticipated results from the restoration;
  - a plan for the monitoring, operation, or maintenance of the restored area.
28. For **NWP's 29 and 39**, the discharges of dredged or fill material for the construction of *stormwater management facilities* in *perennial streams* are not authorized.
29. For **NWP's 29 and 39**, channel relocations are limited to man-made drainage ditches.
30. For **NWP 41**, notification must be submitted for projects that require mechanized land clearing in waters of the U.S., including wetlands, in order to access or perform reshaping activities.
31. **NWP 41** is prohibited in channelized streams or stream relocation projects that exhibit natural stream characteristics and/or perform natural stream functions.

\*Bankfull corresponds to the discharge at which channel-forming processes, such as forming or removing bars or meanders, is most effective. It is typically associated with the 1.5-year storm event, the "ordinary high water mark", and the elevation on the stream bank where flooding begins in a stable stream system. It can often be identified in the field by the elevation of the highest depositional feature (e.g. point bars), a recognizable floodplain, or a break in perennial vegetation.